

# Lessons and Tips from the Bluegrass State

" If I was charged with a crime, and I had to choose between a really great investigator with a mediocre attorney, or a really great attorney with a mediocre investigator, I'd choose the really great investigator and the mediocre attorney every time."

-Jon Rapping

# Component Methods

I Discovery

II Crime Scene

III Client

IV Victim

V Witness

VI Reports, Testifying

# First Meeting with Investigators

- Crime Scenes
- Witness Memories Fade
- Evidence Can Be Discard
- Witness can move

# Initial Meeting

- Charges Against the Defense
- Summary of the State's Case
- Attorney's Objectives for the Investigation
- Determine if Case is Task Specific or FULL Investigation
- What are Priorities
- Establish Routine Defense Team Meetings
- What is the Preliminary Theory of Defense
- What Attorney want you to do for the case?

# Discovery

- Analyze
- Review
- Organize
- Defense Perspective

# What Are We Looking For?

- Who
- What
- Where
- When
- Why
- How

# Statement / Color Code

- Witnesses' Names
- Contacts
- Police Officers
- Forensic Personnel



# OneNote

- Laptop:
- [http://www.getnow.com/windows/business/other/microsoft-onenote-2010/?refid=660&u=http://www.getnow.com/windows/business/other/microsoft-onenote-2010/%3Frefid%3D763&gclid=COuLtZ\\_35rkCFURp7Aod9j0Aww](http://www.getnow.com/windows/business/other/microsoft-onenote-2010/?refid=660&u=http://www.getnow.com/windows/business/other/microsoft-onenote-2010/%3Frefid%3D763&gclid=COuLtZ_35rkCFURp7Aod9j0Aww)

# Ipad

- [http://www.downloadcrew.com/article/26431-microsoft\\_onenote\\_for\\_ipad](http://www.downloadcrew.com/article/26431-microsoft_onenote_for_ipad)

# Tablets

- [http://answers.microsoft.com/en-us/office/forum/officeversion\\_other-onenote/how-to-download-onenote-to-my-tablet/acc6e78c-5a56-4890-87c8-7ade3db4ed5e](http://answers.microsoft.com/en-us/office/forum/officeversion_other-onenote/how-to-download-onenote-to-my-tablet/acc6e78c-5a56-4890-87c8-7ade3db4ed5e)

# Timeline

- Major Events
- Time and Dates
- Witness Observations
- Statements

# Timeline

- Factual Findings
- Focused by Legal Theory
- Legal Analysis Guides Investigation
- Lawyer Question to Guide Investigation

"Nobody - repeat, nobody - gets it right the first time."

- Tom Peters

# Client

- Situation
- Bad Habits
- View
- Defense Interview
- Police Interrogation
- Narrative

# Initial Interview

- Begin the Whole Process Correctly
- Get the Actual Defense Started
- Avoid Jumping Ahead in the Process



# Approaching the Interview

- Appearance
- Basics
- Seating, Eye Contact
- Opening the Interview
- Dealing with Contradiction, Lies, Deception, Manipulation
- Closing Interviews

# Field Investigative Techniques

- Defendant Interview
- Crime Scene Report
- Examining the Evidence
- Victim and Witness Background Investigation
- Location of Witnesses
- Interviewing Witnesses
- Pitfalls of Interview

# The Wire – Jimmy & Bunk On A Crime Scene

"The biggest problem with communications  
is the illusion that it has occurred."

-George Bernard Shaw

# Victimology

- Background Check
- Physical Characteristics
- Occupation
- List of Family, Friends, and Co -Workers
- Medical / Psychiatric History

# Adapt

- A - Apprehend the perpetrator if Possible
- D - Detain and Identify Witness / Suspects
- A - Assess the Crime Scene
- P - Protect the Crime Scene
- T - Take Notes

Ethics

# Who's at the Scene?

- Fire Department
- EMT
- Police Officers
- CSI Unit
- Detectives
- Prosecutor's Staff
- Medical Examiner
- Specialist
- Family
- Friends
- Neighbors
- Media



# Defense Crime Scene Investigation Part 1

- Written Notes and Reports
- Photographs
- Sketching

# Defense Crime Scene Investigation

## Part 2

- Observe
- Record
- Collect
- Preserve

# Items Needed for Crime Scene

- Photo Equipment
- Sketch Pad
- Measuring Devices
- At Least 2 Legal Pads
- Flash Light
- Investigator Identification Card
- Blank Subpoenas
- Release of Information Forms

# Understanding Medico - Legal Autopsy Results

- Cause of Death
- Mechanism of Death
- Manner of Death

# Medical Examiner / Coroner

- Coroner is an official who investigates and holds inquests concerning death from unknown or violent causes. The coroner may or may not be a physician depending on the law in each state.
- Medical Examiner is a Physician who is trained and qualified for the task of investigating the cause of death and the circumstances surrounding it. Training usually includes study of pathology and forensic medicine. The examiner is empowered by governmental agencies to represent them, and is expected to make a comprehensive report of findings to judicial or police authorities. The skill of a medical examiner is especially important in investigating deaths wherein malpractice, homicide, suicide, or other criminal actions are suspected of being a contributing factor.

- Go talk to the medical examiner / coroner
- Request the medical examiner's file
- May include notes, photos, report from medical examiner investigator

# Autopsy Crime Scene

- Description of the Circumstances of Death
- Description of the Death Scene
- Condition of the Body When First Discovery
- Statements from Witnesses, Suspects
- Photographs, Diagrams, Sketches of the Scene
- Weapons or Other Articles Found at the Scene Relating to Cause of Death
- Questions Formulated During the Initial Phase of the Investigation

# Cause of Death

The underlying disease or injury  
responsible for setting in motion  
a series of psychological events  
culminating in death



# Mechanism of Death

The physiological derangement produced by the cause of death that results in death.

# Manners of Death

A system for classifying death based in large part on the presence or absence of intent to do harm, and the presence or absence of violence.

# Forensic Pathologist

- A physician who is certified in forensic pathology by the American Board of Pathology

# Forensic Autopsy

- Examination of Crime Scene
- Identification of Body
- External Examination of the Body
- Internal Examination of Body
- Documentation of Injuries
- List of Diagnosis and Interpretation

# External Examination

- Preliminary Procedures
- Physical Characteristics
- Postmortem Changes

# Postmortem Lividity

- Purplish - Blue Discoloration Due to Settling of Blood
- Skin may be Pale if Pressed Against a Hard Surface or Object Which Prevented Sedimentation
- In Early Staged, Livor can be Blanched by Compression
- Usually Fixed after 8-12 Hours

# Livor Mortis

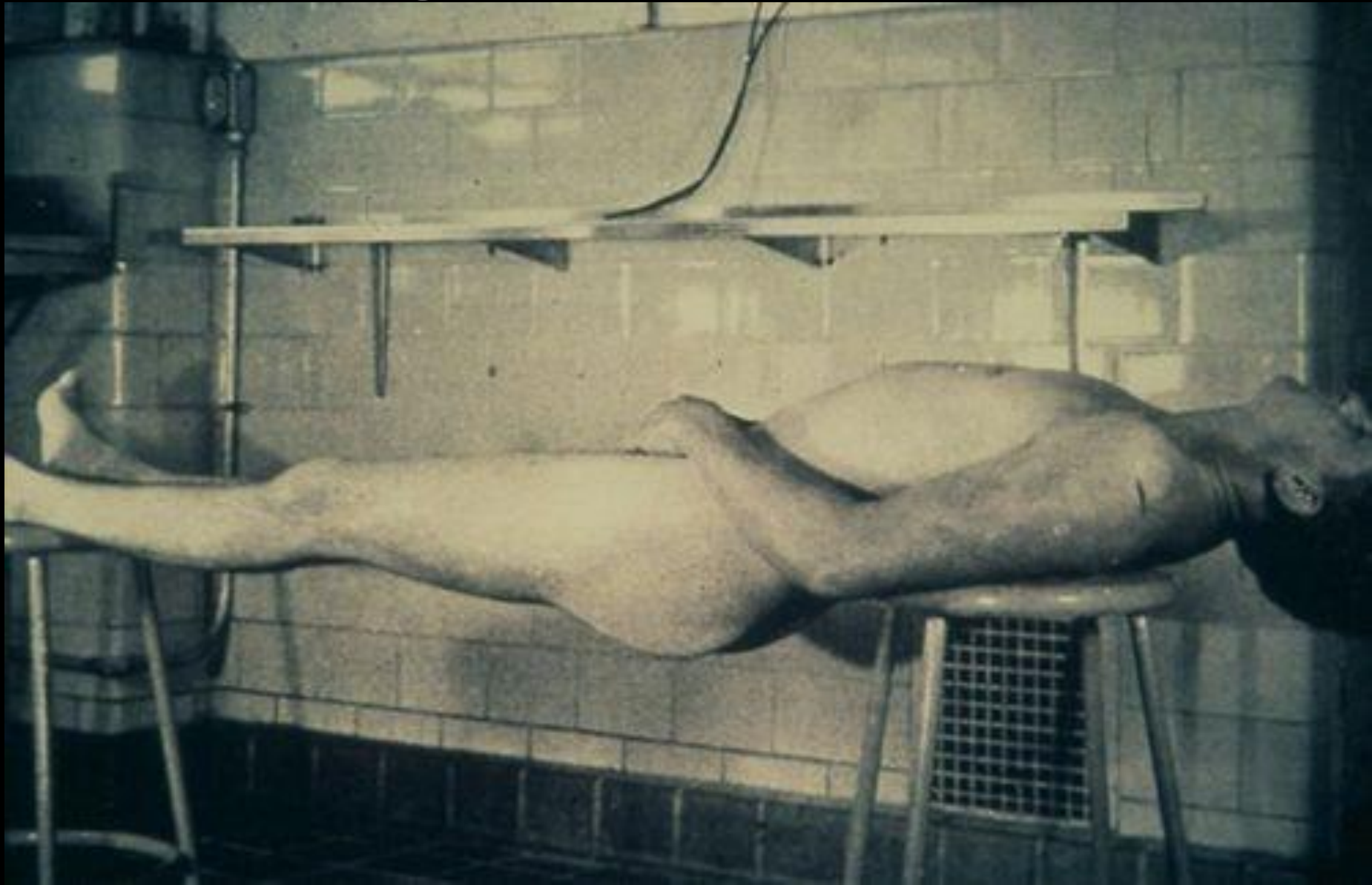


# Postmortem Rigidity

- After Death, Muscles become Flaccid
- Within 30 - 60 Minutes, Muscles become Stiff to Frozen
- This Progresses for maximum of 12 Hours
- Disappear within the Following 12 Hours
- Small Muscles become Rigid Before Large
- Physiochemical Process



# Rigor Mortis



- The Stiffness that Occurs in Dead Bodies

# Internal Examination

- Thoracic and Abdominal Cavities
- Internal Organs
- Head
- Neck

# Clothing

- Observe for Detects / Stains before Removal from Body
- Remove without Tearing or Cutting
- Compare Defects in Clothing to Wounds on Body
- Dry Properly
- Property Inventory

BIAS

Documentation of Injury Should Include Detail Sufficient to Provide Meaningful to Users of the Forensic Autopsy Report, and to Permit Another Forensic Pathologist to Draw Independent Conclusion Based on the Documentation.

*–Forensic Autopsy Performance Standards  
National Association of Medical Examiners*

# Interviewing Witnesses

# Preparing for the Interview

- Read the Discovery
- Know the Elements of the Offense Charged
- Know the Facts of the Cold Case
- Run Background on Witness
- Establish a Goal for the Interview
- Decide on Statement Strategies

# First Approach

- Conducting the Interview



# Type of Witnesses

- Friendly Witnesses
- Neutral Witnesses
- Hostile Witnesses

# Friendly Witness

- Willing to Meet with You
- Give Time Necessary to Conduct a Thorough Interview
- Tell Us Everything They Know

# Friendly Witnesses Tips

- Two Dangers
- Technique: Funnel Approach
- Narrative
- Rarely Interrupt
- Ask Open-Ended Questions
- Repeat Back to Witness What the Witness has Told

# Neutral Witnesses

- Not Favorably Disposed to Either Side
- Often Reluctant to be Involved but Not Emotionally Predisposed to FEEL threatened or be Hostile

# Neutral Witnesses Tips

- Initial Goal is to Establish Rapport and "Win Them Over"
- Need to Understand what Would Motivate this Witness to get Involved
- Neutral Witnesses is Difficult then Hostile Witnesses
- They Need Us to Help Them Understand How Important Their Information Is

# Hostile Witnesses

- Not as Hard to Interview as We Sometimes Anticipate
- People Who Feel Emotionally about an Event or Person Usually Need or Want to Talk Deep Down
- Getting Through the Front Door that is Difficult

# Possible Goals

- Reduced the Emotions Involved
- Learn all About the Bad Facts
- Develop Impeachment Material
- Soliciting Views on Potential Outcomes

# Interview Technique

- Interview Technique is the Opposite of that for Friendly Witnesses
- Begin with Close - Ended Questions
- Slowly work on Opening Up the Witness by Expressing Empathy



- Move to Open - Ended Questions
- Most Important Questions
- Reducing Hostility
- Allowing the Witness to Share Bad Facts
- Conflicting Details

# Frequent Mistakes

- Talking too Much
- Know What a Pregnant Pause is and Use it
- Wait Before Asking the Next Question
- If it's a Potential State Witness, Do Not Begin interview with "I'm Here to Talk about What You said to the Police"

# Overcoming Objections

- I will Call the Prosecutor and Get Back With You
- I Don't Have Time, and I Don't Want to be Involved
- Why Should I Talk to Defense?
- I'm a Prosecution witness
- I was Told not to Talk to You
- I already spoke to Police
- I Don't want to have to Repeat this in Court
- I Don't want to be Subpoenaed

# Interviewing Pitfalls

- Calling Ahead
- Being Somewhere Distracting
- Giving Blank Statement Forms to Pick Up Later

- Summarizing Interviews in your own Words
- Interview Witness in the Presence of Another Witness
- Taping Without a Through Pre-Interview
- Not have Proof you Identified Yourself as part of the Defense
- Leaving Copy of the Witness's Statement

“It's not a question of telling something that's not true. It's telling something that makes it true. That's what makes a great trial lawyer.”

*—Stephen Wizner*

# Investigator Challenges

- Making Promises
- Threatening a Witness
- Unauthorized Practice of Law
- Letting the Witness tell ONLY You

- Revealing Confidential Information
- Speaking for the Client
- Witness wants to Change Story
- Victims wants to Drop Charges after Talking to You



# After interview

- Leave the Door Open for Future Contact
- Leave Your Number
- Clarify
- Thank the Witness
- Document the Contact in Full Detail
- Follow Up with a Thank You Later

# Taking a Witness Statement

- Heading
- Narrative

# Narrative

- Write Out the Statement in First Person
- Avoid Run-On Sentence
- Read Aloud with Witness

- Correction One Line and have Witness Initial along with you
- Skip lines
- Allow Witness to Correct any and all You have Written
- Purposely insert a misrepresentation of witness

- Ask If Anything else the Witness Would Like to add or Change
- Have witness sign his/her Signature on every page
- Number Each Page

"I have read this \_\_\_\_ ( ) page statement. I have also had the opportunity to make and initial all if the additions, deletions, and correction I desired. To the best of my knowledge it is accurate and complete."

# Basic Report Writing

- Report Caption
- Report Contents
- Memo's to the File

# Report Caption

- Interviewee / Witness
- Date
- Time
- Location
- Person Present
- Circumstances



# Report Contents

- 3C's - Clear, Concise, Complete
- Who, What, When, Where, Why, How
- Active Voice
- Avoid Pronouns
- Refer to Individual by Name
- Do Not Use Unfamiliar Abbreviation

- Don't Equivocate
- Number Paragraph and Pages
- One Witness per Report

# Memo's To the File

- Document All action Taken
- Every Attempt to Locate a Witness, etc.
- Write Down All Details
- Summarize Interviews / Statements

- Know if you going Keep your Notes
- Notes a Witness saw you take should be Kept

# Testify

- Professionalism
- Witness Preparation
- Simple Tips to Witness
- Prosecutor Tactics
- Cross-Examination

# Professionalism

- Appearance
- Manner / Behavior
- Knowing the Facts

# Tips to Witness

- Be Truthful
- Listen to the Question
- Understand the Question
- Think Before Answering
- Answer Yes or No

- Answer Only the Question Asked
- Never Guess at an Answer
- "I Don't Know is Ok"
- "I Don't Remember" means I Once Did
- Be Cooperative and Respectful to Both Counsel
- Just Don't Agree
- Don't Argue with the Prosecutor



# Common Prosecutor Tactics

- Rapid Fire or Multiple Questions
- Condescending Language
- Over Friendly
- Leading Questions
- Staring

# Cross -Examination

- Keep Calm
- Conscious of Answer Sound to Others
- Don't Say More than Needed
- Understand Question before Answering

- Bias
- Identification to Witness
- How you told the Statement

# Impeachment

- Important for Credibility
- Substantive Evidence

# Proper Impeachment Questions

- Do you Recall Speaking to
- Was Anyone Else Present
- You Signed a Written Witness Statement
- Must Confront Witness with Specific Statement

# Investigator Same Questions

- Did you Speak to Witness
- Was Anyone Present?
- Did she / he Sign a Written Witness Statement
- Did you Read it or Have it Read

- Did she/he have a chance to make Corrections before Signing
- Did you Witness the Signature
- Is this the Statement

# No Written Statement

- During Interview did You ask Witness questions
- What did She/He tell You
- Did She / He say Why She Didn't know
- Did You Ask Her / Him to Contact You
- Did She / He Contact You



“It's not the time in the ring that wins a fight, but the work at 4:30a.m. with no one watching that makes me a champion”

*—Muhammad Ali*

# Social History Video

*–DeBug*